

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARK ONE WIPES, LLC)	CASE NO. 3:22-cv-00258-JJH
)	
Plaintiff,)	JUDGE JEFFREY J. HELMICK
)	
vs.)	
)	<u>ANSWER TO COUNTERCLAIM</u>
ALSTON & BIRD LLP, et al.)	
)	
Defendants.)	
)	

Now comes Plaintiff, Mark One Wipes, LLC, by and through its counsel, and hereby answers Defendant Alston & Bird LLP's Counterclaim as follows:

ANSWER TO DEFENDANT ALSTON & BIRD LLP's COUNTERCLAIM

1. Plaintiff admits the allegations in paragraph 1 of the Counterclaim.
2. Plaintiff admits the allegations in paragraph 2 of the Counterclaim.
3. Paragraph 3 contains a legal conclusion to which no response is required.
4. Paragraph 4 contains a legal conclusion to which no response is required.
5. Paragraph 5 contains a legal conclusion to which no response is required.
6. Plaintiff admits that Plaintiff retained Defendant Alston & Bird as its legal counsel. It denies the remaining allegations.
7. Paragraph 7 references a document, which speaks for itself. Responding further, Plaintiff denies the remaining allegations.

8. Paragraph 8 references a document, which speaks for itself. Responding further, Plaintiff denies the remaining allegations.

9. Paragraph 9 states a legal conclusion to which no response is required. Responding further, to the extent the paragraph does not state a legal conclusion, Plaintiff denies the allegations.

10. Paragraph 10 states a legal conclusion to which no response is required. Responding further, to the extent the paragraph does not state a legal conclusion, Plaintiff denies the remaining allegations.

11. Paragraph 11 references a document, which speaks for itself. Responding further, Plaintiff denies the remaining allegations.

12. Plaintiff denies the allegations in paragraph 12 of the Counterclaim.

13. Plaintiff denies the allegations in paragraph 13 of the Counterclaim.

14. Plaintiff denies the allegations in paragraph 14 of the Counterclaim.

15. Plaintiff denies the allegations in paragraph 15 of the Counterclaim.

16. In response to paragraph 16, Plaintiff realleges and reincorporates its responses to the preceding paragraphs.

17. Paragraph 17 states a legal conclusion to which no response is required. Responding further, to the extent the paragraph does not state a legal conclusion, Plaintiff denies the allegations.

18. Plaintiff denies the allegations in paragraph 17 of the Counterclaim.

19. Plaintiff denies the allegations in paragraph 18 of the Counterclaim.

20. Paragraph 20 states a legal conclusion to which no response is required. Responding further, to the extent the paragraph does not state a legal conclusion, Plaintiff denies the allegations.

21. Paragraph 21 states a legal conclusion to which no response is required. Responding further, to the extent the paragraph does not state a legal conclusion, Plaintiff denies the allegations.

22. In response to paragraph 22, Plaintiff realleges and reincorporates its responses to the preceding paragraphs.

23. Plaintiff denies the allegations in paragraph 23 of the Counterclaim.

24. Plaintiff denies the allegations in paragraph 24 of the Counterclaim.

25. Plaintiff denies the allegations in paragraph 25 of the Counterclaim.

26. Plaintiff denies the allegations in paragraph 26 of the Counterclaim.

27. Paragraph 27 states a legal conclusion to which no response is required. Responding further, to the extent the paragraph does not state a legal conclusion, Plaintiff denies the allegations.

28. Plaintiff denies each and every allegation and part thereof which is set forth in the Counterclaim and has specifically admitted in the preceding paragraphs.

AFFIRMATIVE DEFENSES

1. The Counterclaim fails to set forth facts sufficient to state a claim upon which relief can be granted and further fails to state facts sufficient to entitle Defendant to the relief sought or any relief sought whatsoever.

2. Defendant Alston & Bird's Counterclaim is barred by the doctrines of waiver, estoppel, release, and/or laches.

3. Defendant Alston & Bird's Counterclaim fails for lack of performance on the part of Defendant Alston & Bird.

4. Defendant Alston & Bird's Counterclaim fails for lack of consideration on the part of Defendant Alston & Bird.

5. Defendant Alston & Bird's Counterclaim due to frustration of purpose.

6. Defendant Alston & Bird's Counterclaim is barred because the legal advice provided by Alston & Bird's attorneys was legally deficient, amounting to malpractice.

7. To the extent Defendant Alston & Bird has suffered any damages, it has failed to mitigate its damages.

8. Defendant Alston & Bird's Counterclaim fails due to its independent breaches of any agreement between the parties.

9. Plaintiff reserves the right to raise any additional affirmative defenses if a basis for them is discovered.

WHEREFORE, Plaintiff requests that Defendant Alston & Bird's Counterclaim be dismissed in its entirety; the costs of Defendant against this Counterclaim and attorneys' fees; and any further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Kevin C. Hulick

STUART E. SCOTT (0064834)

KEVIN C. HULICK (0093921)

SPANGENBERG SHIBLEY & LIBER LLP

1001 Lakeside Avenue East, Suite 1700

Cleveland, OH 44114

(216) 696-3232

(216) 696-3924 (FAX)

sscott@spanglaw.com

khulick@spanglaw.com

Counsel for Plaintiff Mark One Wipes, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of June 2022, I electronically filed the foregoing with the Clerk of Courts by using the CM/ECF Filing System. Copies will be served upon counsel of record by, and may be obtained through, the Court's CM/ECF Filing System.

/s/ Kevin C. Hulick

STUART E. SCOTT (0064834)

KEVIN C. HULICK (0093921)

SPANGENBERG SHIBLEY & LIBER LLP

1001 Lakeside Avenue East, Suite 1700

Cleveland, OH 44114

(216) 696-3232

(216) 696-3924 (FAX)

sscott@spanglaw.com

khulick@spanglaw.com

Counsel for Plaintiff Mark One Wipes, LLC